

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Docket No:

ALAN MESSERLIAN AND JO-ANN
MESSERLIAN AS SURVIVING
SPOUSE

Plaintiffs,

v.

A.O. SMITH CORPORATION, et. al.,

Defendants

CA 09 393

**NOTICE OF REMOVAL OF CLAIMS AGAINST
DETROIT DIESEL CORPORATION ONLY**

**TO: THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL
PARTIES AND THEIR ATTORNEYS OF RECORD**

The defendant, Detroit Diesel Corporation (“DDC”), by its attorneys and for the purpose only of removing the claims asserted against it in the State Court Proceeding (as defined below), to the United States District Court for Rhode Island, District of Providence, respectfully avers as follows.:

1. This removal of claims asserted against DDC only in that certain civil action filed and now pending in Superior Court of the State of Rhode Island, County of Providence, bearing the case name Alan Messerlian and Jo-Ann Messerlian as Surviving Spouse v. A.O. Smith Corporation, et. al., Civil Action No. 08-5037 (the “State Court Proceeding”).

2. The State Court Proceeding was commenced on or about August 18, 2008, by filing a Summons and Complaint and serving the same upon DDC.

3. A copy of the Summons and Complaint and DDC’s answer to plaintiff’s Complaint are attached hereto and marked Exhibit “A”

4. The Complaint alleges that plaintiff was exposed to asbestos-containing products.

5. The DDC Claims are not based on any direct action by DDC, but rather on DDC's former relationship with General Motor Corporation ("GM") as a division of GM. Any finding of liability based on the DDC claims would, at best, be indirect liability on the part of DDC and direct liability on the part of GM.

6. GM is obligated to indemnify and hold harmless DDC for any liability associated with DDC claims.

7. On June 1, 2009, GM filed for bankruptcy protection in the United States Bankruptcy Court, Southern District of New York in the case entitled *In re Motors Liquidation Company, et al. f/k/a General Motors Corp., et al.*, Case Number 09-50086 (REG) (the "GM Bankruptcy Case")

8. Defendant has simultaneously with the filing of this Notice, given written notice to attorney John Deaton, 1 Richmond Square, Suite 163W, Providence, RI 02906.

9. This Court has jurisdiction over DDC claims pursuant to 28 U.S.C. § 1452 and Federal Rules of Bankruptcy Procedure ("FRBP"), Rule 9027 and the DDC Claims may be removed to this Court by DDC in that these claims are related to the GM Bankruptcy Case and a resolution of the DDC Claims could conceivably have an effect on the estate of GM currently being administered in the GM Bankruptcy Case.

10. This Notice of Removal is filed within the 90-day time prescribed by the FRBP Rule 9027.

11. The prosecution of the DDC Claims constitutes a core proceeding in that it will affect the liquidation of the assets of the GM estate and will adjust the debtor-creditor

relationship between DDC and GM as a result, of, inter alia, GM's indemnification obligations to DDC.

12. This Court, therefore, has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1331 and 1334.

WHEREFORE, Defendant Detroit Diesel Corporation hereby removes the DDC Claims only to this Honorable Court.

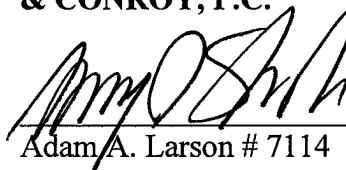
DATED: 8/27/09

Respectfully submitted,

By the Defendant

DETROIT DIESEL CORPORATION

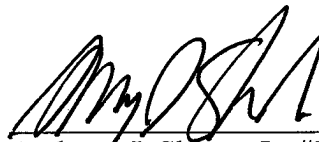
By Its Attorneys,
**CAMPBELL CAMPBELL EDWARDS
& CONROY, P.C.**



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CERTIFICATE OF SERVICE

I, Anthony J. Sbarra, Jr., Counsel for the Defendant, do hereby certify that a true copy of the above document was served on all counsel of record via PACER.



Anthony J. Sbarra, Jr. #7307